

1952.

File No. Tenancy II/52
(N) Pt. II

Legal Department

B. BRANCH

P. 8 (E)
1952



Subject:—

Notifications under the Bombay
Tenancy and Agricultural Lands Act,
1948.

File No. Tenancy II/52 (N)
Pt. II

137-B

Legal Department

With reference to the first report at page 1 ante, made by the Collector for recommending the taking over of the management of the Torda Jahagir, the Additional Secretary in his opinion No. 11861, dated 21-8-50, at page 17 ante pointed out that according to the reports of the Nazimdar, who made enquiry on the spot, it appeared that the tenants did not want Jahagir Wahiwat and that they preferred Government management. The second report made by the Collector is at pp. 23-29 ante. With reference to this report also the R.L.A. in his opinion No. 16390, dated the 16th October 1950, at p. 47 ante, stated that none of the grounds given in the report is sufficient to justify the assumption of management by Government under section 44 of the Act, as the report merely disclosed instances of harassment and the fact that the cultivators of the Jahagir have not paid land revenue for the 3 years and that they would pay dues to Government. But there was no reference in the report to the effect that on account of the disputes between the landlord and his tenants the cultivation of his estate has seriously suffered. The Collector has now forwarded a third report as at pp. 87-98 ant. In this report also merely isolated instances of harassment have been stated and there is nothing to indicate that cultivation has seriously suffered. It is noticed in this and similar cases that at first the Collector reports the circumstances are insufficient for the operation of the Act. The papers are sent back more than once, as in the case in this file - and eventually the findings necessary under the Act are elicited. If such cases are contested, upon the circumstances, a suspicion of "mala fides" in bringing into operation this Act and assuming estates without proper cause may arise.

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V.R.K.
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Either the Collector makes a proper report the first time that such facts as are necessary exist, or the matter ought to be dropped. "Reconsideration" by the Collector from what may be regarded by the courts as virtually promptings from the Secretariat will lead eventually to legal complications. If the Collector reconsiders then there ought to be some reasons for it- some change in the previous circumstances to justify it.

O/C SA/-
12/8

Additional Deputy Secretary to Government

U.R. to R.D. No. 13333, dated the 14th August 1952.

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V.R.K.
21/7/56

Legal Department

Point at 'A' on p. 537 ante. - In view of the provisions of sections 52, 53, 54, 55 and 56 of the Bombay Tenancy and Agricultural Lands Act, 1948, it appears that it would not be permissible to separate the debts for the purpose of making repayment of debts. Under the provisions of section 54, all the debts and liabilities, after the amounts thereof are determined by the manager, have to be included in the liquidation scheme and the scheme so prepared has to be submitted to the Collector for sanction. According to the provisions of section 56, the work of satisfying the debts can be undertaken only after the scheme is sanctioned. In the circumstances, The claim of H. H. Chinnabai Gaekwar cannot be separated and settled in advance of other claims.

Point at 'B' on p. 537 ante. - Under section 52 of the Act, it is the Manager, who has power to determine the amount of debts and liabilities in accordance with the rules made under the Act (Please see Sec. 52(2)(1)). As the power to sanction the liquidation scheme vests with the Collector, it would be competent to the Collector to ask the Manager to ^{re-}investigate into the claim and forward new scheme. But the Collector cannot undertake the re-investigation himself and determine the amount as the power to determine the amount of debts and liabilities is conferred only on the Manager under section. 52.

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Additional Secretary To Government.

U.R. To R.D. No. 12911, dated the 4th August 1952.

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V.R.K.
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Legal Department.

The R.I.A. is requested to scrutinize the draft notifications at pages 229-235 ante.

2. The first notification is intended to fix maximum rent in terms of assessment in respect of areas specified in Schedule I of the notification and also to fix maximum rent in respect of land in respect of which crop-share is payable in the areas specified in Schedule II of the said Notification.

3. The second Notification is intended to fix maximum rent in respect of lands in respect of which crop-share is payable as rent in the areas specified ^{in the} Schedule. In respect of such lands if rent is paid in cash the existing maximum rent as notified under various notifications is to continue. Therefore in the second notification all the thirteen notifications specified in the preamble are shown to be modified in so far as they relate to rent in terms of crop-share.

4 The first notification has been amended on the lines of the recent draft supplied to R.D. under L.D. U.R. No. 15982/B, dated the 27th September 1952 at page 217 ante. The wording of that notification was carefully considered by the D.S(L- and has therefore been adopted in the present case.

5 In the case of second draft, para (2) is not ~~now~~ necessary as the intention of that paragraph has been brought in paragraph 1.

The notifications at pages 237-243 ante as amended are in order.

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Addl. Secy.

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Legal Department

Section 88(1)(c) as proposed to be amended by the Bill will cover the area of the Baroda City Municipal Borough: the two mile area around the said Municipal limit will however continue to be exempted. If such exemption is to be taken away the previous notification will have to be cancelled. A draft of such cancellation is sent herewith.

O/C.

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Additional Deputy Secretary to
Government.

U.R. to R.D. No. 16803/B, dated the 11th October 1952.

4 c.
V.R.K.
21/7/56

Legal Department

This case relates to the question of the assumption of management of the Jahagir estates of Varthali and Lelpur under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVI of 1948). Section 44 of the Act as it stands at present provides for the assumption of management on any of the following grounds, namely:-

- (1) On account of the neglect of the landholder or disputes between him and his tenants, the cultivation of the estate has seriously suffered;
- (2) for the purpose of improving the economic and social condition of peasants;
- (3) for ensuring the full and efficient use of land for agriculture.

In view of the doubtful legality of the second ground, it is being deleted from Section 44 by the Amending Bill which has been passed by the Legislature. It would no longer be possible to rely on that ground for the assumption of management. This fact was brought to the notice of the Collector By R.D. in their letter D.O. No. O/F dated the 17th April 1952. So far as the Varthali estate is concerned the Collector of Sabarkantha has in paragraph 3 again tried to press his recommendation on the second ground. In paragraph 4 he has, however, stated that there is no evidence to show that the cultivation of the land has been seriously affected. In paragraph 5 he adds that the Jahagir can also be taken over for ensuring the full and efficient use of land for agriculture. The only ground for coming to this conclusion is that the Jahagirdar has not handed over the records of his Jahagir to Government. No court will consider this ground as being sufficient for the assumption of the management of the Jahagir. The grounds given by the Collector for the assumption of the management of the Varthali Jahagir are not sufficient and any order passed for such management would not be defensible on being challenged in a Court of law.

2. As regards the Lalpur Jahagir the position appears to be different. In paragraphs 5 to 12 the Collector refers to disputes between the Jahagirdar and his tenants. In paragraph 13 he comes to the conclusion that the cultivation has suffered. If this conclusion of the Collector can reasonably be supported, there would not be any objection to assume management of the Lalpur Jahagir. But it does not appear from the papers that the Collector has followed the procedure laid down in rule 30 of the Bombay Tenancy and Agricultural Lands Rules, 1949, made under the Act. The notification declaring the Jahagirdars to be landholders under section 2(4) of the Act may issue in the form of the appended draft. But before the management is assumed and the notification for the same is issued, the Collector should be directed to hold an inquiry as required by rule 30.

O/C Sd/-
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Additional Secretary to Government

U.R. to R.D. No. 1217-Confl, dated 8th November 1952.

4 c.
V.R.K.
21/7/56

Legal Department

The view taken by the Secretary, Revenue Department, that the recitals in the Collector's letter does not satisfy the objective test of section 44 is correct. In view of the doubtful legality of the assumption of the management of an estate on the ground that such assumption may be necessary to improve the social and economic conditions of peasants, section 44 has been amended by the Legislature and Bill (L.A. No. XXXI of 1952) is awaiting the assent of the President. Under that Bill no estate can be taken under management only on the ground of improving the economic and social conditions of peasants. There is no direct evidence in this case that on account of the disputes between the ~~the~~ the land holder the peasants the cultivation of the estate has ~~been~~ seriously suffered. R.D. may consider this case again. Subject to what is stated above, the draft notifications at pp. 47-49 ante as amended, are in order.

O/C

Sd/-
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Additional Secretary to Government.

U.R. to R.D. No. 22103/B, dated the 30th December 1952.

4 a.
V.R.K.
21/7/56